**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

115 CWP-10002-2024 (O&M)
Date of decision: 02.05.2024

The New India Assurance Company Limited
...Petitioner

VERSUS

Babli and another
...Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. Satpal Dhamija, Advocate for the petitioner.

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VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present petition is to the order dated 10.05.2023 passed by the National Consumer Disputes Redressal Commission, New Delhi, whereby Revision Petition No.2856 of 2018 preferred by the petitioner against the order dated 11.07.2018 passed by the State Consumer Disputes Redressal Commission, U.T. Chandigarh, in FA No.51 of 2018 was partly allowed and only the rate of interest was reduced from 9% to 5%.

2. Briefly summarized, the facts of the case are that the respondent owns an INDO Farm Earth Moving Equipment (Hydra Crane), Model Indo Power 12, bearing registration No.HP-12H-1882 make 2010. The vehicle was fully insured for the period from 25.08.2016 to 24.08.2017. The same was rented to one Mr. Praveen Kumar son of Mr. Sharwan Singh when the vehicle sustained damage due to overturning on 25.10.2016 while loading/unloading the iron sheet coils in Celco/Intelgas. A DDR No.35 dated

26.10.2016 was got lodged at Police Station Derabassi and a claim was also made with the petitioner-Insurance Company. However, as the payment had not been done, the respondent approached the District Consumer Disputes Redressal Forum, Chandigarh, which allowed the complaint and directed the petitioner to pay a sum of Rs. 2,11,214/- vide its award dated 01.01.2018. Aggrieved of the same, an appeal was preferred by the petitioner before the State Consumer Disputes Redressal Commission, U.T. Chandigarh, which was also dismissed vide order dated 11.07.2018. A revision petition was thereafter, filed by the petitioner before the National Consumer Disputes Redressal Commission which was partly allowed and the rate of interest was reduced from 9% to 5% vide order dated 10.05.2023. Still aggrieved, the present writ petition has been filed.

3. Learned counsel for the petitioner has vehemently argued that the overturning was not covered in the definition of an accident and that the Consumer Courts were in error while awarding the amount of Rs.2,11,214/- along with the interest. He further submits that the petitioner-Insurance Company was not provided with a written notice of the incident as a result whereof, the loss was not surveyed, hence, the entire claim could not be awarded against the petitioner-Insurance Company, in the absence of any assessment of loss by the Surveyor deputed by it.

4. I have heard the learned counsel appearing on behalf of the petitioner-Insurance Company at length and have gone through the documents appended with the present petition.

5. It is undisputed that the vehicle in question was insured during the period when it overturned and suffered damage. Learned counsel for the

petitioner could not make any reference to a specific Clause of the agreement as per which overturning of a vehicle, while carrying out its routine function(s) for which it is meant, would not fall within the definition of an '**accident**' and would not be covered under the policy. It is further evident that the incident in question took place on 25.10.2016 and a DDR was got lodged at Police Station Derabassi on 26.10.2016.

6. The arguments advanced by the petitioner including that the Surveyor had not been deputed by the petitioner-Insurance Company have already been considered by the District Consumer Disputes Redressal Forum as well as by the State Consumer Disputes Redressal Commission and also by the National Consumer Disputes Redressal Commission. It has been specifically recorded that the consumer had intimated the petitioner-Insurance Company and also sent a legal notice. A casual approach of the petitioner-Insurance Company was clearly an act of deficiency for which rights of consumer cannot be defeated. The issue cannot be now permitted to be re-agitated. It is only in an event where the findings recorded by the authorities i.e. the Consumer Courts are perverse, illegal or are not legally sustainable on a meaningful interpretation and reading of the evidence, that a judicial review may be undertaken by the Constitutional Court. There is also nothing harsh or disproportionate in awarding interest @ 5% per annum.

7. In the absence of any material on the basis whereof the decision concurrently rendered by the Consumer Courts can be held to be perverse, illegal, unsustainable or based on gross misreading of evidence, the High Court would not ordinarily substitute its own opinion for that of the Competent Courts.

8. There is no cogent reason for carrying out a judicial review of the said issue. I do not find sufficient circumstances exist for interference into the award passed. The interest awarded @ 5% also cannot be said to be on a higher side.

9. **The present writ petition is accordingly dismissed *in limine*.**

(VINOD S. BHARDWAJ)
JUDGE

02.05.2024
Mangal Singh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No